

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

September 2006

What's in Your Wallet?

Educators are understandably ill-at-ease when faced with the need to search students. But with a few simple guidelines, educators can search with confidence, or at least a lesser sense of foreboding.

The first requirement for a search of one or more students is to make sure the search is justified from the beginning. Searching a student's backpack because the school received an anonymous tip that someone, of an undetermined age and gender, may have a pack of cigarettes would not be justified.

A tip from another student that a female sophomore of x height with red hair, blue eyes and wearing a "Kiss me I'm Irish" t-shirt has cigarettes, on the other hand, would be grounds for a search of students meeting that description.

A search is justified at its

inception, if the search is likely to turn up some evidence that the student is violating school rules/policies or law. The likelihood of a search meeting this standard depends, as seen in the prior examples, on what the educator will be searching for and how credible the tip is.

The second step is to make sure the search is reasonable under the circumstances. Strip searches are rarely, if ever, reasonable in the public school setting, unless the principal has credible evidence that the student is carrying a weapon on his or her body.

Asking a student who is a reputed smoker and who is suspected of smoking to empty his pockets, on the other hand, is probably a reasonable request.

It should also go without saying that female students should be searched by females and males by males.

The law on searches applies equally to off-campus activities, such as field trips and overnight trips.

In limited circumstances, educators can also conduct searches without reasonable suspicion. Metal detectors at school entrances, for instance, are permissible because the search involves minimal invasion of student privacy rights.

Random searches of student lockers, on the other hand, might not withstand court challenge, unless the school has a written policy informing students that such searches are possible and makes it clear that lockers are the property of the school.

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UPPAC CASES

- The Utah State Board of Education revoked Leslie Ann
 Shaw's license for a period of
 five years. Shaw's revocations results from her inappropriate sexual relationship
 with a student and failure to
 follow her principal's directives regarding maintaining
 proper boundaries with the
 student.
- The State Board reinstated the educator license of Robert James Jackson. Jackson's license was previously suspended based on his misappropriation of school district funds.

UPPAC Case of the Month

Typically, the Utah Professional Practices Advisory Commission does not take action against educators engaged in affairs with other consenting adults (unless the adult is a recently graduated student, or the relationship is criminal).

However, UPPAC may get involved if the educator's conduct causes disruption at the school. For instance, when a teacher has an affair with a parent, and the student of that parent knows and tells others, and those others tell others, and soon those others call the district to express their outrage at the situation, UPPAC might investigate the situation.

UPPAC will most definitely investigate if the educator is caught en flagrante in the school or other district-owned property, such as a district car.

And UPPAC has investigated consensual relationships that relied on students to pass notes between the adults or otherwise included students in the "fun" of covering up the affair.

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Eye On Legislation-Other States

The Utah State Board of Education has been summoned to several legislative interim committee meetings regarding its decision to grant students who don't pass UBSCT diplomas.

Apparently Georgia has had similar concerns. The Georgia State Board of Education grants diplomas to students who request a variance from the state's requirement that students pass the Georgia High School Graduation Tests in order to receive a diploma.

Students in Georgia who fail the exit exam can still receive a diploma if

The student took the GHSGT at least four times within the last year without passing, completed remedial classes for each section of the test the student failed, each time he or she failed it, passed at least one of the test sections, met other attendance and course requirements for graduation, passed final exams in each course and scored within a specific range on each section of the GHSGT. (Macon Telegraph and NASBE Headline Review).

Michigan and New Jersey recently took steps to address steroid use in school.

Michigan passed two laws relating to steroids. The first requires schools to set policies on steroid use. The second includes steroids in the list of drugs that cannot be used within 1000 feet of a school. (*Detroit Free Press*).

New Jersey has taken the matter a

step further, adopting the nation's first random drug testing program for steroid use in all athletes competing in state championships. Students who test positive or refuse to be tested are ineligi-

ble to participate in any school sports for one year. (USA Today).

Georgia adds another item to our review of state legislation. The state expanded its sex offender registry requirements to prohibit a registered offender from living, working or loitering within 1000 feet of schools, parks, gyms, swimming pools or one of the state's 270,000 **bus stops**. Most states have prohibitions on living near schools, but do not extend to so many other areas where kids might be. Each of Georgia's

Recent Education Cases

Williams v. Lancaster County School Distr. (S.C. App. 2006). Continuing the adultery theme, an appellate court in South Carolina denied a married couple's suit against a school district and principal for slander.

The husband was the athletic director at the school, the wife was a teacher. They accused the principal of slander based on rumors that the husband was having an affair with a school secre-

tary began circulating around the school.

Relations between the Williams' and the principal were already strained after the Williams' daughter dropped from her num-

ber one class rank to number two. Things deteriorated further after an assistant principal reported finding Mr. Williams in a locked school bathroom with the secretary.

The principal discussed the situation with Mr. Williams and the secretary, but did not tell anyone else about the matter.

Rumors had been circulating about Williams and the secretary before the bathroom incident anyway, and the court was unwilling to hold the principal liable for slander based on little more than his strained relationship with the couple.

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UPPAC case cont.

(Continued from page 1)

Educators may also be investigated if they use confidential information received because of their position to initiate or develop the relationship, i.e. knowing of a recent divorce or having mom's work phone from the student's records.

Perhaps more important than UPPAC action, however, is the effect of such affairs on the school. Parents do get upset when married educators have affairs. As role models for students, such behavior does not send a great message to students about responsibility and respect for others.

Affairs also have a tendency to end, usually in a less than amicable way, causing great strife amongst the faculty or parents who support one member of the couple over the other.

When the affair is between a teacher and his/her supervisor, things get even uglier. At any time during or after the affair, the subordinate (whether a teacher, student teacher, assistant principal, secretary, classroom volunteer or others) may have a legitimate sexual harassment claim against the supervisor.

In short, affairs between educators, educators and staff, or educators and parents are ill-advised (it should go without saying that affairs with students are completely off-limits and will result in loss of the educator's license).

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Eye on Legislation (Cont.)

181 school districts must designate local bus stops as such to enable police across the state to enforce the new law. Police officers have argued that this particular restriction in the law may do more harm than good because the sheer number of stops makes enforcement difficult and may encourage offenders to avoid reporting address changes.

As one sheriff pointed out, all of the 490 offenders in his county would have to move to another county because the 4,700 bus stops in the area would make it impossible for an offender to stay 1,000 feet away from a bus stop.

In response, the Georgia School Boards Association has urged its members to "proceed with caution"

before making the official designations. (*Macon Telegraph*).

In our own state, chatter has been heard suggesting that the process for selecting state

school board members may be revamped yet again.

Sen. Howard Stephenson, R-Draper, is unhappy with the governor's office for not selecting nominating committee members by the Nov. 1 deadline.

His response to the delay has been twofold, first suggesting that more candidates should be allowed to file because the nominating committee was not set up in time—a solution that makes little sense since the committee has no say on who files to run for the school board. It appears that Sen. Stephenson does not think good candidates will choose to run unless they are guaranteed that the committee is stacked in their favor. But such a guarantee belies the premise that the committee is formed to select the best candidates, not push any particular agenda.

His second potential solution is another legislative change to guarantee that the committee is fully staffed by the Nov. 1 deadline.

Your Questions

Q: What is the state formula for determining class size? I have heard there is a state law limiting classes to 22 students.

A: If only the state had the funding to make that dream come true. However, since the Legislature has chosen not to fund drastic class size reduction, the State Board does not determine class size limits.

Some money is supposed to be appropriated each year for class size reduction, but state law requires What do you do when. . . ?

only that the money, if allocated, be spent to reduce class sizes in the youngest grades first. Once the district has 18 students per class in k-2, it can petition to use the money for the upper grades. Districts can spend the money in k-2 indefinitely. Short of actual funding for class

size reductions, local school boards have full authority to adopt policies and determine optimal class sizes in their districts. Many have policies that provide a full-time aide to assist in a class which has more than a specified number of students.

Parents, faculty, or staff who are dissatisfied with those policies can appeal to their local school board members.

Q: The principal at my son's school (Continued on page 4)

Recent Cases Cont.

(Continued from page 2)

This holding is in line with the majority of the case law on defamation suits by educators.

Hachmann v. County of Nassau (N.Y. App. Div. 2006). Persons reporting child abuse are not held liable if the allegations prove to be false, so long as the report is made in good faith.

In this case, the principal reported a parent for child abuse the same day the parent informed the principal he would be speaking with the superintendent about an issue in one of his son's classes.

The parent reported that the principal acted with malice, telling the parent he would call child protective services "because I can do whatever I want."

The principal, thru his attorneys, failed to refute this claim and the court ruled the parent could proceed to trial on suit for libel and slander.

Bellairs v. Beaverton Sch. Dist. (Or. App. 2006). The court ruled in favor of the district's decision to

terminate a teacher for insubordination.

The teacher had been the subject of numerous complaints based on his abrasive manner with students and co-workers. The district made several attempts to assist the teacher who continued to engage in insubordinate conduct, including reducing a student to tears, allowing students to enter grades and attendance and failing to turn in final grades on time.

The court found ample evidence to support the district's action.

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250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7830 Fax: 801-538-7768 Email: jhill@usoe.k12.ut.us





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

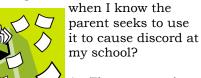
Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

(Continued from page 3) told me that if I am dissatisfied with the school, I should just leave—is this okay?

A: No. Unless the student is a risk to other students, every child living within the school's boundaries, or accepted into a charter school, is entitled to an education at that school. A principal cannot "counsel" a student out or suggest that a parent take the child somewhere "better suited" to the student.

While the principal may be rightthe student would do better elsewhere—this is not a decision the principal can make for the parent. No matter how much the principal and parent may clash, the student has a right to be educated at his neighborhood school or a charter school where he has enrolled. Q: A parent has asked for information on the gross compensation of all of my employees, and my education and employment history. Do I have to provide this information



A: The requested information is all public information and must be dis-

closed to a requester under the state's Government Records Access and Management Act (GRAMA)—to the extent it exists.

In other words, if the school maintains records on gross compensation, which it probably does, that information is public and should be provided to the parent. If the school has your resume on file with the employment and education history, that must also be disclosed.

If, however, the resume also has a home address or phone number, that information must be redacted. The home phones and addresses of public employees are not public information.

Further, if the school does not maintain information on an employee's education, employment history, or other qualifications for the job, you do not need to create such a record to satisfy a GRAMA request.

The school can also charge the parent for the **reasonable** costs of compiling and copying the information (whether it is a hard copy or electronic). These costs should not be billed at a premium rate, but should accurately reflect the time and effort involved in compiling the record.

A final reminder, a school/district does not have to, nor should it, **create** a record to respond to a GRAMA request.